

## **REMARKS**

Claims 1-45 are subject to restriction and/or election requirement. The Applicants elect Group I, claims 1-42, 44 and 45, drawn to an ink jet recording element, with traverse, and also elect species 2), claims 3-11, 18 and 44.

### **Restriction under 35 USC § 121:**

The Examiner has required restriction between Group I, claims 1-42, 44 and 45, drawn to an ink jet recording element and Group II, claim 43, drawn to a method of using, as the Examiner opines that, in the instant case, the product, as claimed, can be used in a materially different method such as the method of making an ink print by printing with an ink pen. Therefore, the Examiner observes that, because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper. The Applicants respectfully traverse the restriction requirement.


As stated by the Examiner, Claims 1-42, 44, and 45 are limited to an inkjet recording element, and Claim 43 relates to a method of using the element. However, both independent claims claim an inkjet recording element comprising at least two ink receiving layers wherein at least one of the two ink receiving layers comprises porous polyester particles. Therefore, it is suggested that commonality exists among the two Groups identified by the Examiner with respect to the inkjet element comprising at least two ink receiving layers wherein at least one of the two ink receiving layers comprises porous polyester particles. Coextensive searching of the two Groups would not prove seriously burdensome to the Examiner, but would instead be most efficient. Therefore, it is respectfully requested that the Restriction Requirement be reconsidered and withdrawn and that all claims now pending be examined.

In addition, the Examiner indicates that this application contains claims directed to the following patentably distinct species of the claimed invention: elements with polyester particles 1) below the topmost layer (claims 2, 12-14 and 19-28), 2) in the topmost layer (claims 3-11, 18 and 44) and 3) both in the topmost layer and below (claims 15-17 and 45) and requires the Applicants under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the

merits to which the claims shall be restricted if no generic claim is finally held to be allowable, indicating that claims 1 and 29-42 are generic. The Applicants elect species 2), in which the polyester particles are located in the topmost layer (claims 3-11, 18 and 44).

It is believed that the foregoing is a complete response to the Office Action and that the claims are in condition for allowance. Favorable reconsideration and early passage to issue is therefore earnestly solicited.

Respectfully submitted,

  
Attorney for Applicant(s)  
Registration No. 42,334

Lynne M. Blank/ct  
Rochester, NY 14650  
Telephone: 585-477-7418  
Facsimile: 585-477-1148